

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Robyn West,

Complainant,

vs.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION**

Senate District 51 DFL, and Tom
Hamilton, Treasurer Senate District 51
DFL,

Respondents.

TO: Parties

On November 2, 2010, Robyn West filed a Campaign Complaint with the Office of Administrative Hearings alleging that Senate District 51 DFL, and Tom Hamilton, Treasurer of Senate District 51 DFL, violated Minnesota Statutes § 211B.06 by preparing and disseminating false campaign material relating to the expansion of the Anoka County Airport in Blaine. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing, to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Pursuant to Minn. Stat. § 211B.35, the evidentiary hearing must be held within 90 days of the date the complaint was filed.

You will be notified of the dates and times of both the prehearing conference and evidentiary hearing, and the three judges assigned to hear this matter, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law

Judges. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judges and the opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: November 3, 2010

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Complainant Robyn West is an Anoka County Commissioner who won reelection on November 3, 2010. She alleges that Respondent Senate District 51 DFL and its Treasurer Tom Hamilton disseminated a campaign flyer that contains a false statement regarding the expansion of the Anoka County Airport in Blaine. The flyer promotes Zak Chlebeck, a candidate who ran for election in Senate District 51. The flyer states in bold lettering "Zak Chlebeck opposes any expansion of the Blaine airport." In finer print the flyer states "His opponent's campaign committee chair, Anoka County Commissioner Robyn West, proposed expanding the Anoka County Airport to handle larger jets." Complainant alleges the statement is false because she never proposed the airport expansion and because the Anoka County Board of Commissioners never voted on such a proposal. She argues that throughout her campaign for reelection to the Board of Commissioners she has opposed the expansion of the runway.

Minnesota Statutes § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot

question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact and not against unfavorable deductions or inferences based on fact.¹ Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.² Finally, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.³

To prove a violation at the hearing, the Complainant must show that the statement is substantively false and that the person or persons who prepared, disseminated or broadcasted the advertisement did so knowing it was false or communicated it with reckless disregard of whether it was false. The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.⁴ Based on this standard, the Complainant has the burden to prove by clear and convincing evidence that the Respondent prepared or disseminated the statement knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the ad or acted “with a high degree of awareness” of its probable falsity.⁵

To allege a *prima facie* violation, the Complainant must allege sufficient facts to show that a violation of law has occurred.⁶ “Prima facie” means “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”⁷ “Prima facie evidence” is “[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.”⁸ In determining whether a campaign complaint sets forth a *prima facie* violation of the statute, the Administrative Law Judge is required to credit as true all of

¹ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

² *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

³ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

⁴ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

⁵ *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), rev. denied (Minn. 2006).

⁶ Minn. Stat. § 211B.32, subd. 3.

⁷ *Black's Law Dictionary* 1228 (8th ed. 2004).

⁸ *Id.* at 598.

the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible.

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. The Complainant has alleged that Respondents have stated that she proposed the expansion of the Anoka County Airport. Complainant alleges the statement is false because she never proposed the expansion, the County Board never voted on the proposal, and because she has told her constituents that she opposed the expansion. The statement at issue is included in campaign material, is capable of being proven true or false, and refers to the character or acts of a candidate for election. As such, the statement falls within the purview of Minn. Stat. § 211B.06. The allegation will proceed to a prehearing conference and evidentiary hearing to be scheduled in the near future.

B. J. H.